In the High Court of Punjab and Haryana, Chandigarh

I.T.A. No. 393 of 2006

Date of Decision: 22.01.2007

The Commissioner of Income Tax, Jalandhar-II, Jalandhar

…Appellant

Versus

Ram Kumar

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE VINOD K. SHARMA

PRESENT: Mr. Saneev Bansal, Advocate,
for the appellant-revenue.

Mr. Akshay Bhan, Advocate,
for the respondent-assessee.

JUDGMENT

M.M. KUMAR, J.

The revenue has approached this Court by filing instant appeal under Section 260A of the Income Tax Act, 1961 (for brevity, 'the Act'), challenging the view taken by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, in its order dated 16.12.2005, passed in I.T.A. No. 291(ASR)/2003, in respect of assessment year 1994-95. It has been claimed that the following substantial questions of law would arise for our determination:-

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the

order of Ld. Commissioner of Income Tax (Appeal) where he had deleted the addition of Rs. 11,22,260/- on the ground that the seized material was not confronted to the assessee ignoring the questionnaire issued by the Assessing Officer raising a clear cut question on the issue.

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in not appreciating the facts of the case in right perspective thereby rendering its order to be perverse."

The assessee filed his return of income for the assessment year 1994-95 on 21.2.1995 declaring his total income at Rs. 1,06,740/-. On 25.11.2002, the Assessing Officer framed the assessment under Section 143(3) of the Act at a total income of Rs. 11,97,600/- and made an addition of Rs. 11,22,260/- on account of short term capital gain on sale of 92 marlas of land (P-1). The assessee filed an appeal before the Commissioner of Income Tax (Appeals), Jalandhar, who deleted the addition of Rs. 11,22,260/-, which was made by the Assessing Officer on account of short term capital gain, holding that the profit earned by the assessee on the sale of land was long term capital gain as declared by the assessee at Rs. 29,404/- and not a short term capital gain as assessed by the Assessing Officer (P-2). Feeling aggrieved by the order of the CIT (A), the revenue filed an appeal before the Tribunal, who vide order dated 16.12.2005, passed in I.T.A. No. 291(ASR)/2003, upheld the order of the CIT (A) and dismissed the appeal on the ground that the seized documents on the basis of which the Assessing Officer had determined the value of

capital gain was never confronted to the assessee (P-3). It is appropriate to mention that the assessee has been a partner of M/s Chopra Cloth House, Kapurthala. He acquired 92 marlas of land by virtue of a Will executed in his favour by Smt. Balbir Kaur daughter and one of the legal heirs of Brig. Jai Singh, on 24.2.1993. Smt. Balbir Kaur had 1/54th share out of land measuring 249 kanals 10 marlas. The assessee executed a registered Power of Attorney on 28.10.1993 in favour of Sarvshri Joginder Singh and Harbans Singh sons of Shri Mool Singh, transferring his rights to deal/sell the aforementioned land, which was registered with the Tehsildar, Kapurthala on 19.11.1993. However, on 18.11.1993 the assessee executed an agreement to sell this land for Rs. 3,00,000/- to one Shri Gurbachan Singh son Shri Arjan Singh and Shri Harminder Singh son Shri Surjan Singh and passed on actual physical possession to them. The amount received on sale of land was mentioned as Rs. 3,00,000/-, which was received by the assessee through bank drafts. A search, under Section 132 of the Act, was conducted by the Department at the residence/business premises of Shri Gurbachan Singh, who had purchased the aforementioned land from the assessee. On the basis of the documents seized, the total payment received by Shri Ram Kumar, assessee, from Gurbachan Singh was Rs. 12,35,000/-. The document narrated the cash amount paid to the assessee twice as Rs. 5,00,000/- and Rs. 4,35,000/- other than the drafts of Rs. 3,00,000/- and accordingly the Assessing Officer held that the assessee had received Rs. 12,35,000/- as sale price and not Rs. 3,00,000/- as disclosed in the return or in the transfer deed. The same was held to be short term capital gain because the assessee was stated to have acquired the rights of ownership in the property on 24.2.1993, which was disposed

of vide agreement executed on 18.11.1993, after a period of nine months. The Assessing Officer determined the value of the land in view of the provisions of Section 49(1)(ii)/55(2)(b)(ii) of the Act. The land was found to be *banjar kadim*.

We have heard the learned counsel for the parties and do not find any legal infirmity in the view taken by the Tribunal. There are categorical findings that the Assessing Officer did not recover any document from the possession of the assessee nor the assessee was ever confronted with the seized material. The explanation of the assessee was called, which he replied and there was no mention of any seized material referred to by the Assessing Officer despite the fact that the seized material was transferred to the Assessing Officer by the Deputy Commissioner, Income Tax, Range-II, Jalandhar. It is in these circumstances that we find that the view taken by the Tribunal is fully supported by the judgment of Hon'ble the Supreme Court in the case of **Kishinchand Chellaram v. Commissioner of Income Tax, Bombay, (1980) 125 ITR 713**. There is no substantial question of law which would warrant admission of the appeal. Accordingly, the appeal fails and the same is dismissed.

(M.M. KUMAR)
JUDGE

(VINOD K. SHARMA)
JUDGE

January 22, 2007
Pkapoor